

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 5 OF 2018

1. Brihan Karan Sugar Syndicate Private Limited
Registered under the Companies Act, 1956,
having its registered office at Plot No. 5/A,
Behind Hotel Natraj, nasik Pune Road,
Nasik 422 101 and
A factory at village Gondhe, Taluka Igatpuri
Dist. Nasik.
2. The Brihan Maharashtra Sugar Syndicate
Limited,
Registered under the Companies Act, 1956,
having its registered office at 600, Sadashiv
Peth, Commonwealth Building,
Laxmi Road, Pune 411 030
and a factory at Village Shripur
Tq. Malshiras, Dist. Solapur 413 112. Appellants

Versus

Karmaveer Shankarrao Kale Shahakari Sakhar
Karkhana Limited
a co-operative society Registered under the Bombay
Co-operative Societies Act, 1925, and deemed to be
registered Under the Maharashtra Co-operative
Societies Act, 1960, having its office at Gautam Nagar
Post Kolpewadi, Tq. Kolpargaon, Dist. Ahmednagar. Respondent

Mr. Rahul Chitnis, advocate instructed by Mr. V.P. Raje &
Mr. Dinesh Y. Mali, advocates for appellants.
Mr. H.W. Kane with Mr. Vaibhav Joglekar, advocates instructed by
Mr. K.C. Sant, advocate for respondent.

CORAM : M.S. SONAK, J.

DATE : 14th FEBRUARY, 2018.

ORAL JUDGMENT :

1. This is an appeal against order dated 7th December, 2017, made by the learned trial Judge injunctioning the appellants (original defendants) from using the artistic label "Military Santra" produced at Exh. 3/104 alongwith the plaint for selling country liquor, till the disposal of Copy Right Suit No. 4/2011.

2. In support of this appeal, Mr. Chitnis, learned counsel for appellants, without giving up any of the grounds raised in the appeal memo, has stressed upon the following two submissions :-

(i) That respondent (plaintiff) has made patently false statement in paragraph no. 67 of the plaint to the effect that plaintiff gained knowledge about the infringing label in the third week of February 2011 and further, plaintiff's representatives had not seen the infringing label and the plaintiff came to know about the infringing label only on receipt of affidavit dated 17.2.2011 filed by KAMIPL and Annexure F annexed thereto. Mr. Chitnis submits that it is crystal clear from the documents in RCS No. 3/2004 instituted by respondent-plaintiff against M/s Seven Star Distilleries, defendant, in the said suit, by way of reply to application for temporary injunction, which clearly included the label "Military Santra" of the present appellants. This reply was filed sometime in the year 2005. Mr. Chitnis submits that this means that in the year 2005 itself, respondent-plaintiff had full knowledge about the alleged infringing label. Mr. Chitnis submits that equitable relief of injunction ought to have been denied to such respondent-plaintiff on account of deliberate mis-statement

and suppression as well as on account of acquiescence from 2005 onwards till the date of institution of the suit in the year 2011. Mr. Chitnis submits that it is well settled that plaintiff, who seeks the equitable relief of injunction, must, of necessity, disclose all the material facts and further, not make any deliberate mis-statement of facts. He submits that if this is detected, such a plaintiff, cannot be granted equitable relief of injunction. Mr. Chitnis further submits that this being a case of alleged infringement of copy right, mere publication is sufficient and issue of trade use etc. is quite irrelevant. He submits that since there was publication way back in the year 2005 and since, respondent-plaintiff had permitted such publication to go by or to continue, this is a clear case of acquiescence, on account of which, no equitable relief of temporary injunction could have been granted in favour of the respondent-plaintiff. He relies on **M/s Power Control Appliances Vs. Sumeet Machines Pvt. Ltd.**, 1994(2) SCC 448, to explain the doctrine of acquiescence and its importance in the matter of grant of injunction. Mr. Chitnis submits that this point which is now being raised by the appellants was squarely raised and argued before the learned trial Court, however, Mr. Chitnis points out, that in the impugned order, there is no consideration of this vital point. He submits that non-consideration of this vital point vitiates the impugned order, which is required to be set aside on this ground alone.

(ii) Mr. Chitnis submits that respondent-plaintiff can claim no copy right in the label "Bhingri Santra" because it is the appellants-defendants who, since the year 1975, owns the copy right in the artwork of using a device of glass of vertically

rectangular label with colour combination black and white. Mr. Chitnis submits that infact such label was approved by the Commissioner for Excise in the year 1975 itself and the label "Military Santra" was nothing but an extension or adaptation of such earlier label. For this reason also Mr. Chitnis submits that trial Court erred in granting the equitable relief of injunction to respondent-plaintiff in relation to its label "Bhigri Santra", which is nothing but an infringement of defendant's/appellant's copy right in the label which, it has been using since 1975. For this reason also, Mr. Chitnis submits that the impugned order is liable to be set aside.

3. Mr. Kane, learned counsel for respondent-plaintiff submits that the averments in paragraph no. 67 of the plaint have to be read in their entirety as well as in the context in which they came to be made. He submits that infact, the plaint is to be read in its entirety and the averments in paragraph no. 67 of the plaint may not be read in isolation. He submits that the appellants-defendants has nowhere asserted that they were openly using the label "Military Santra" since the year 2005 or prior to the same and that, such label has been duly published by them as contemplated under the provisions of Copy Right Act, 1957. He submits that affidavit filed in RCS No. 3/2004 by and on behalf of M/s Seven Star Distilleries does not suggest that there was any publication of the label "Military Santra". Mr. Kane submits that what is important is not merely the knowledge of infringing the label but the knowledge of infringement which was gained only in the third week of February 2011, when the appellants-defendants, despite of receipt of cease and desist notice, failed to comply with the same.

4. In the alternate and without prejudice, Mr. Kane submits that in the matters of this nature, mere fact that some incorrect statement may appear in the plaint or application for temporary injunction, is not a ground for denial of relief of temporary injunction. In support, Mr. Kane, relies on **Shaw Wallace & Co. Ltd. & another Vs. Mohan Rocky Spring Water Breweries**, 2006(4) Mh.L.J. 396 and **Sabmiller India Ltd. Vs. Jagpin Breweries Ltd.**, MANU/MH/1913 of 2014.

5. Mr. Kane further submits that it is the appellants-defendants, who have come out with a patently dishonest case and therefore, such appellants-defendants should not be heard to say that it is the respondent-plaintiff who have mis-stated the facts or suppressed any fact. Mr. Kane invites the Court to have look at the rival labels and submits that it is very apparent that it is the appellants-defendants, who have infringed the copy right of respondent-plaintiff in its label "Bhingri Santra".

6. Mr. Kane invites this Court to refer to order dated 13.08.2017 in Appeal from Order No. 38/2007 made by this Court in appeal from order arising out of the suit instituted by this very appellants against M/s Seven Star Distilleries. He points out that the contentions of appellants-defendants to the effect that the product in question i.e. country liquor, is being consumed mostly by lower strata of society, and therefore, the effect of the label on such consumers is vital and is required to be taken into consideration. He submits that such contentions which were upheld in the said order, squarely apply to the present case and, on the same basis,

the appellants-defendants, were rightly restrained by the learned trial Judge from using the label "Military Santra", which was a clear infringement of respondent'/plaintiff' copy right in the label "Bhingri Santra".

7. Mr. Kane submits that there is absolutely no material in support of appellants' contention that it had any prior copy right since the year 1975. He submits that this aspect has been considered in detail by the learned trial Judge in the impugned order and, taking into consideration the law laid down by the Hon'ble Supreme Court in the case of **Wander Ltd. and another Vs. Antox India P. Ltd.**, 1990 (supp) SCC 727, there is absolutely no case made out to warrant interference in the impugned order.

8. Mr. Kane submits that copyright is a right created by the Statute and therefore, only defences as available for an action alleging infringement of copy right as are specified in Section 52 of the Copy Right Act, 1957. He submits that 'acquiescence' is not one such defence and therefore, appellants-defendants were not even entitled to raise such a defence in law.

9. Without prejudice, Mr. Kane submits that there is a difference between mere delay and acquiescence. He submits that in order to establish acquiescence, defendant, must plead and prove, atleast prima facie, some positive act on the part of plaintiff which, encouraged the defendants to use the infringing label. He submits that in the present case, there are neither any pleadings nor is there any proof in this regard. He reiterates that this is a case where the defendants have dishonestly and with impunity

infringed plaintiff copy right and such a defendant, who does no equity cannot even rely upon any equitable principle like acquiescence. He submits that the trial Court has already recorded finding that there was no user of the infringing label upto the year 2008 and in the year 2008 also, the user was quite minimum. Mr. Kane submits that no case of acquiescence has at all been made and therefore, there is no case made out to interfere with the impugned order.

10. Mr. Kane relied upon the following decisions to explain the difference between mere delay and acquiescence :-

a) Judgment and order dated 17-11-2017 in Commercial Appeal no. 125/2017 in NM(L) No. 35/2017 in Commercial Suit (L) no. 32 of 2017.

b) Pidilite Industries Ltd. vs. S.M. Associates and others, 2003 SCC Online Bom 143

c) Schering Corporation and ors. Vs. Kilitch Co. (Pharma) Pvt. Ltd., 1990 SCC Online Bom 425.

11. Mr. Kane submits that the issue of acquiescence should be deemed to have been decided against the appellants-defendants by the trial Court, even though, there is no specific reference to this aspect in the impugned order. Mr. Kane has relied upon decision of the Constitution Bench of the Hon'ble Supreme Court in the case of **Bombay Vs. Scindia Steam Navigation Co. Ltd.**, AIR 1961 SC 1633, in support of his submission regards deemed rejection by

the trial Court.

12. Mr. Kane further submits that since, respondent-plaintiff is a registered copyright owner and a prima facie case of infringement has been made out, balance of convenience is quite irrelevant in such a matter as held in **Express Bottlers Services Pvt. Ltd.& anr. V. Pepsico Inc.** 1991 SCC Online Bom 549 and **Skol Breweries Limited Vs. Som Distilleries and Breweries Limited and Shaw Wallace and Company Limited**, Manu/MH/1110/2011.

13. Rival contentions now fall for determination.

14. As regards the first contention relating to suppression and mis-statement on the part of respondent-plaintiff, reference is necessary to the averments in paragraph 67 of the plaint which reads as follows :

67. The cause of the action for the present suit arose in the third week of February 2011, when the Plaintiff gained knowledge about the infringing labels, when the Plaintiff received a copy of the aforesaid Affidavit dated 17.02.2011 filed by KAMIPL and Annexure F annexed thereto containing specimen copies of various infringed labels. In view of the said transfer of licence by the Defendant no. 2 to the Defendant no. 1, the Plaintiff made the aforesaid correspondent with the Defendant nos. 1 and 2 and called upon them to comply with various requisitions including stopping usage of the said label, which did not yield any response from them. The Plaintiff also made correspondence with the office of the Commissioner for obtaining information and certified copies of the approval letter and the

said labels. The cause of action further arose in May 2011, when the Commissioner refused to comply with the requisitions in the letter dated 22.04.2011. The Defendant nos. 1 and/or 2 are presumably continuing with sale of liquor under the said impugned labels and are thereby infringing the Plaintiff's statutory rights. Due to the sale of country liquor under the said impugned labels, the cause of action is continuing everyday. As stated above, it appears that pursuant to approval of the labels, "Military Santra" and "Santra 5000", the Defendant nos. 1 and/or 2 had either not used the said labels or their use was intermittent and unsubstantial. As a result the Plaintiff's representatives had not seen the above labels and that the Plaintiff came to know about it only on receipt of the aforesaid Affidavit dated 17.02.2011 filed by KAMIPL and Annexure F annexed thereto. In view of the above, at the relevant time, the Plaintiff could not have filed any Suit against the Defendant nos. 1 and/or 2 as regards the labels "Military Santra" and "Santra 5000" for passing off and for infringement of the Plaintiff's right under the Copyright Act, 1957 and the Trademarks Act, 1999 as regards the said label "Bhingri Santra". The facts set out hereinabove clearly show that the Plaintiff made active efforts to get copies of the relevant documents as regards the infringing labels with an intention to challenge the said infringing label. Moreover, the fact that the Plaintiff repeatedly and consistently took steps and actions against the other infringing labels including the Defendants' other infringing label shows that the Plaintiff had never given up their rights and contentions against the said labels. The Plaintiff required some time for compiling the documents in the huge compilation of documents to be filed with every suit and for giving instructions to the advocate. Thereafter, the advocate drafted the complaints and other necessary pleadings and affidavits

in all the matters including the present matter, which was required to be approved at the Plaintiff's end. Meantime, the courts were closed for the summer vacation during May 2011. The above process, therefore, took some further time. The Plaintiff, therefore, could not file the present suit immediately after the getting knowledge of the aforesaid infringing label in February 2011. Meanwhile, it appears that Defendant nos. 1 and/or 2 are continuing to use the infringing trademark labels (produced at serial No. 104 and 105 of the list of documents) every day. The said acts of the Defendant nos. 1 and/or 2 amount to a continuing wrong and new cause of action arises every time. In view of the above, the Plaintiff submits that suit is within limitation.

(Emphasis supplied)

15. In paragraph no. 13 of the plaint, therefore, the following statements, have been made as statements of fact though, in the verification to the plaint, there is an omnibus declaration that the statements made in paragraphs 1 to 75 of the foregoing plaint, except the contents based on information received and legal submissions, which are based on the affiant's knowledge derived from the records of plaintiff and that affiant believes the same to be true and correct and further that nothing (sic) material has been concealed in the plaint. The statements are as follows :-

"The cause of the action for the present suit arose in the third week of February, 2011, when the Plaintiff gained knowledge about the infringing labels, when the Plaintiff received a copy of the aforesaid Affidavit dated 17.02.2011 filed by KAMIPL and Annexure F annexed thereto containing specimen copies of various infringed labels."

"As a result the Plaintiff's representatives had not seen the above labels and that the Plaintiff came to know about it only on receipt of the aforesaid Affidavit dated 17.02.2011 filed by KAMIPL and Annexure F annexed thereto."

"The Plaintiff, therefore, could not file the present suit immediately after the getting knowledge of the aforesaid infringing label in February 2011."

16. Though it is true that the averments in the plaint were made in the context of the fact that the suit as originally instituted was not just for infringement of copyright but also for infringement of trademark and even passing off, there is no dispute that later on, the issues of infringement of trademark and passing off have been given up and the suit is restricted only to infringement of trademark and that too, of the label "Military Santra". Further, Mr. Kane, is undoubtedly right in his submission that the averments in paragraph 67 of the plaint have to be read in their entirety and not in isolation.

17. However, even after taking into consideration these aspects and upon reading averments in paragraph 67 of the plaint, not only in their entirety but also in the context of other averments in the plaint, it is quite clear that the respondent-plaintiff have made the aforesaid three categorical statements of fact to the effect that they gained knowledge of the infringing label only in the third week of February 2011 upon receipt of the affidavit dated 17.02.2011 and further, that the representatives of the plaintiff had not even seen the infringing label of which they got knowledge only on receipt of affidavit dated 17.02.2011. Later on, respondent-plaintiff

have offered some explanation for the delay between 3rd week of February 2011 and June 2011, when the suit was actually instituted, as to why respondent-plaintiff could not file the suit immediately after getting knowledge of the infringing label in February 2011.

18. Therefore, if there is any unimpeachable material on record indicating that plaintiff and their representatives had seen and had knowledge of the infringing labels way back in the year 2005 itself, then, it is quite clear that the respondent-plaintiff, have made clear mis-statement of fact in the plaint, on the basis of which, the respondent-plaintiff applied for several equitable reliefs, including the relief of temporary injunction. Subsequent explanation to the effect that the aforesaid averments mean that plaintiff had no knowledge of the infringement because there was no publication of infringing label in the manner as contemplated under the Statute or because the appellants-defendants were allegedly making no much use of such infringing label, are really, at least prima facie, appear to be explanations in the nature of an afterthought.

19. There is no dispute that respondent-plaintiff had instituted Regular Civil Suit No. 3/2004 against M/s Seven Star Distilleries some time in the year 2004. There is also no dispute that in the year 2005, said M/s Seven Star Distilleries filed reply to plaintiff application for temporary injunction and alongwith reply, filed not only list of documents but also copies of actual documents which include inter alia the infringing label "Military Santra". This position is infact admitted by respondent-plaintiff in their rejoinder even though, respondent-plaintiff, have attempted to

explain the statements in paragraph 67 of the plaint by contending that there was no publication of the infringing label and further, since the infringing label was used intermittently and unsubstantially, respondent-plaintiff were not at all aware of the infringement.

20. There is a difference between knowledge of infringement and knowledge as regards the very existence of the infringing label. In paragraph 67 of the plaint, respondent-plaintiff have made a categorical statement that they gained knoweldge about the infringing label only in the third week of February 2011 and that too, when they received copy of the affidavit dated 17.02.2011. In the same paragraph, respondent-plaintiff have proceeded to state that their representative had not even seen the infringing label which, they came to know, only on receipt of affidavit dated 17.02.2011. This is quite different from pleading that respondent-plaintiff were aware of the infringing label or had seen the infringing label in the year 2005 itself, but, at that stage, since there was no publication of the infringing label or since, between the period from 2005 to 2008 or 2005 to 2011 when the suit was instituted, the infringing label was not actually used or substantially used, there was no cause for institution of the suit.

21. The respondent-plaintiff did not come to the Court with such case but rather, it came to the Court on the basis that it gained knowledge or that its representative saw the infringing label only when they received copy of affidavit dated 17.02.2011 i.e. in the third week of February, 2011. This means that respondent-plaintiff has made a mis-statement, to put it at the mildest, in the plaint,

on the basis of which, respondent-plaintiff has applied for several equitable reliefs including inter alia the relief of temporary injunction. All the three statements in paragraph 67 of the plaint are mis-statements. There was no disclosure by the plaintiff that they had knowledge and their representatives had very much seen the infringing label way back in the year 2005. The explanations offered, by way of rejoinder, at least prima facie inspire no confidence. Consequently, these were not matters which the trial court could have completely glossed over, as it has in the present case.

22. It is trite that a plaintiff who approaches the Court, particularly in order to seek any equitable interim or ad-interim reliefs, which are essentially discretionary, must not suppress any material fact or particulars but, must make true and correct statements in the plaint or in the application seeking such interim relief. This is a case where a clear mis-statement of fact and that too, quite a material fact, has been made by respondent-plaintiff in the plaint, on the basis of which, respondent-plaintiff, have applied for interim reliefs.

23. Unfortunately, though this issue was squarely raised by appellants-defendants in their written statement, reply to application for interim relief as also, written submission filed before the learned trial Judge, the same has not even been adverted to by the learned trial Judge in the impugned order. It is not the case of respondent that such a issue was not argued before the learned trial Judge so as to excuse non-consideration of such relevant and vital issue. This is therefore, a case of total non-

consideration of a very relevant and vital issue, which imports the exercise of discretion in a matter of this nature.

24. In **Wander Limited** (Supra), the Hon'ble Supreme Court has held that in appeals against essentially discretionary orders, the appeal court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. In this case, one of the settled principles in matters of grant or refusal of interlocutory injunction is whether the plaintiff or the applicant, who seeks such interlocutory injunction has approached the Court by stating all the material and relevant facts in its knowledge. Where the plaintiff or applicant mis-states the facts or suppress facts, which are vital and relevant to the cause then, in the absence of some very good explanation, such plaintiff or applicant, is ordinarily not entitled to discretionary and equitable relief of interlocutory injunction.

25. In this case, as noted earlier, the learned trial Judge, has not even considered the issue of mis-statement and suppression on the part of respondent-plaintiff. This constitutes ignorance of the settled principle of law regulating grant or refusal of interlocutory injunction. It is not as if, this issue was not squarely raised and argued before the learned trial Judge. It is not as if, such issue was insignificant or irrelevant in the matter of deciding an application seeking equitable and discretionary relief of interlocutory injunction. The total non-consideration of such issue

makes a dent to the decision making process, even applying the restrictive parameters prescribed in **Wander Limited** (supra).

26. The reliance by Mr. Kane on the decision of the Constitution Bench of the Hon'ble Supreme Court in **Scindia Steam Navigation Co. Ltd.**, (supra) is quite misplaced. Observations in paragraphs 29 to 31 upon which, reliance was placed by Mr. Kane, were mainly in the context of deciding the issue as to whether a question of law can be said to have arisen, in the absence of any reflection in the order appealed against, that such question was infact considered by the Court or authority which made the order in the first instance. The observation cannot be read out of context in support of the theory of deemed rejection.

27. In any case, even assuming, as submitted by Mr. Kane, that the learned trial Judge in the present case, is deemed to have considered the issue of mis-statement, suppression or even acquiescence and further, rejected such issue, then, it is at once apparent that such rejection is bereft of any reasons whatsoever. It is trite that reasons are the very soul of decision making. In the absence of any reason, it is just not possible to even appreciate as to whether the learned trial Judge was alive to these vital and relevant issues as the basis for the so called deemed rejection of the same.

28. In any case, if a vital and relevant issue is raised by any party, then, the minimum that is expected is that such issue is considered and dealt with one way or the other. This can be evident only when such issue is referred to and thereafter, there is

some decision on this issue backed by atleast some reason in support of the conclusion. In the present case, on perusal of the impugned order, it is evident that the trial Judge, has not even adverted to the issue of suppression, mis-statement and acquiescence, much less, considered the same one way or the other. On the basis of the theory of deemed consideration or deemed rejection, it is not possible to sustain the impugned order which stands vitiated for non-consideration of relevant and vital issue, which squarely arose and was squarely raised before the learned trial Judge.

29. In **Shaw Wallace & Co. Ltd** (supra) the learned Single Judge of this Court upon analysis of the factual position in said matter has held that even though the plaintiff made an incorrect statement in the plaint, that by itself, was not sufficient to deny relief of temporary injunction. This was on the basis that an order of temporary injunction in a suit for infringement or passing off is to be made not only to protect the right of the plaintiff but also to protect the interest of the general public. The order of temporary injunction is to be made so that the public which buys the goods involved, is not deceived or misled.

30. Apart from the fact that the aforesaid observations were made in the context of the facts of the said case, it is necessary to note that the respondent-plaintiff, though, possibly by way of afterthought in the present case, contends that there was hardly any use of the infringing label and that this is one of the reasons why respondent-plaintiff was not even aware of the infringing label. Respondent-plaintiff also contends that there was no publication of

the infringing label in the manner as contemplated under the Copyright Act. This means that on one hand respondent-plaintiff contends that there is hardly any user of the infringing label for last several years or that there is no publication of the infringing label as contemplated under the Copyright Act and, on the other hand, respondent-plaintiff seeks relief of temporary injunction on the basis that denial of such relief is contrary to public interest since, the denial of injunction might result in members of the public being misled or deceived. There is some inconsistency and contradiction in the varied stances. Accordingly, it is not possible to agree with Mr. Kane's contention that **Shaw Wallace & Co. Ltd** (surpa) is an authority for the wide proposition that a plaintiff, who makes a incorrect statement in the plaint, is nevertheless entitled to relief of temporary injunction in a suit for infringement or passing off because, in such a matter, the interest of the public is what matters the most.

31. In **Sabmiller India Limited** (supra) the learned Single Judge of this Court, has infact followed the law laid down by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu V. Jagannath**, AIR 1994 SC 853, but has distinguished the said judgment on facts by pointing out that the facts and documents which were alleged to be suppressed by plaintiff were not material or relevant to the issue involved in the suit and therefore, the **Chengalvaraya** principle was inapplicable. The learned Single Judge has held that had the plaintiff stated facts or produced the documents which are alleged to be suppressed, it would not have had any effect on the merits of the case. The learned Single Judge has also relied upon such distinction carved out by the Hon'ble Supreme Court itself in the

case of **S.J.S. Business Enterprises (P) Ltd. V. State of Bihar** 2004(7) SCC 166, where again, it has been held that issue of suppression sufficient to deny relief can only arise where the suppression is of a relevant and material fact and not an irrelevant or a immaterial fact.

32. In this case, as noted earlier, the fact that respondent-plaintiff had seen and was aware of the infringing label way back in the year 2005, was undoubtedly a vital and relevant fact. Infact, respondent-plaintiff also realises that this was a relevant and material fact in a suit of the present nature. The respondent-plaintiff realises that this was a relevant and vital fact because in paragraph 67 of the plaint, trouble is taken to even explain the delay between third week of February 2011 i.e. the alleged date on which, plaintiff claims to have first got knowledge of the infringing label and, the date of institution of the suit i.e. in June 2011. The Respondent-plaintiff offers this explanation in order to explain as to why respondent-plaintiff did not institute the suit immediately after getting the knowledge of the infringing label.

33. If respondent-plaintiff was to have accepted the position that it had knowledge of the infringing label way back in the year 2005 itself, then, the respondent-plaintiff, would be required to offer explanation as to why the suit was instituted in the year 2011 i.e. after delay of almost six years from the date of the knowledge of the infringing label. Therefore, it cannot be said that the suppression or mis-statement in the present case was in respect of some fact which was neither relevant nor material so as to apply the **SJS Business Enterprises (P) Ltd.** (supra) principle.

34. In this appeal, it is really not necessary to go into the issue of acquiescence in much detail though there is undoubted merit in the contention of Mr. Kane that there is a vital difference between mere delay and acquiescence, particularly in matters of this nature. This is because, as noted earlier, this issue has not even been adverted to by the learned trial Judge in the impugned order. The learned trial Judge had adverted to this issue and ruled upon the same, one way or the other then, as long as such ruling was not entirely arbitrary, capricious or perverse, possibly, this Court, taking into consideration the mandate in **Wander Limited** (supra) may have refrained from interference. However, this is a case where the learned trial Judge has failed to even consider this relevant and vital issue and without consideration of this relevant vital issue, proceeded to make the impugned order and grant relief of interlocutory injunction in favour of respondent-plaintiff. As noted earlier, non-consideration of such a vital and relevant issue is what vitiates the discretion exercised by the learned trial Judge.

35. Mr. Kane, by way of demurrer had proposed that in case, this Court, were to consider the absence of any reference to the issue of acquiescence as indicative of the non-consideration of this contention by the trial Court, this Court, could always remand the matter to the trial Court for consideration of such an issue while retaining the present appeal on its file. Trial Court could then be directed to decide this issue and such decision could always be examined in the pending appeal.

36. This is not a case of mere non-consideration of only the issue

of acquiescence by the trial Court. The trial Court, has also not considered the issue of mis-statement and suppression as well. Besides, this suit was instituted in the year 2011 and even as of now, there is no temporary injunction in operation as against the appellants-defendants. On 11th January, 2018, the learned Single Judge of this Court (K.K.Sonawane, J.) issued ad interim relief staying the operation of the impugned order till returnable date. There is no dispute that this ad interim order has been extended from time to time and continues in force. This means that from the year 2011 onwards, there is no temporary injunction, as such, in operation, against appellants-defendants.

37. As a defence to the charge of suppression and misstatement in paragraph 67 of the plaint, respondent-plaintiff contends that there was no substantial use of the infringing label by the appellants-defendants and further, there was not even proper publication of the infringing label, as contemplated under the Copyright's Act. This, at least, *prima facie*, indicates absence of any serious prejudice or irreparable injury to respondent-plaintiff, for the present. In such circumstances, the dictum of the Hon'ble Supreme Court in the case of **Bajaj Auto Ltd. Vs. TVS Motor Company Ltd.**, (2009) 9 SCC 797, in which, it has reiterated its earlier dictum in **Shree Vardhaman Rice & General Mills Vs. Amar Singh Chawalwala**, (2009) 10 SCC 257, assumes relevance.

38. In **Bajaj Auto** (*supra*), the Hon'ble Supreme Court, at paragraphs 3 to 6, made following observations:

3. It is evident that the suit is still pending

before the learned Single Judge of the Madras High Court. We are unhappy that the matter has been pending in the High Court at the interlocutory stage for such a long time as the suit was filed in December 2007 and yet even written statement has not been filed.

4. Recently, we have held in *Shree Vardhaman Rice & General Mills V. Amar Singh Chawalwala* as follows :

"..... Without going into the merits of the controversy, we are of the opinion that the matters relating to trade marks, copyrights and patents should be finally decided very expeditiously by the trial court instead of merely granting or refusing to grant injunction. Experience shows that in the matters of trade marks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. This is not proper.

Proviso (a) to Order 17 Rule 1(2) CPC states that when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds that, for exceptional reasons to be recorded by it the adjournment of the hearing beyond the following day is necessary. The court shall also observe clauses (b) to (e) of the said proviso.

In our opinion, in matters relating to trade marks, copyright and patents the proviso to Order 17 Rule 1(2) CPC should be strictly complied with by all the courts and the hearing of the suit in

such matters should proceed on day-to-day basis and the final judgment should be given normally within four months from the date of the filing of the suit."

As has been observed by us in the aforesaid case, experience has shown that in our country, suits relating to the matters of patents, trade marks and copyrights are pending for years and years and litigation is mainly fought between the parties about the temporary injunction. This is a very unsatisfactory state of affairs, and hence we had passed the abovequoted order in the abovementioned case to see the ends of justice. We direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully.

5. In the present case, although arguments were advanced at some length by the learned counsel for both the parties, we are of the opinion that instead of deciding the case at the interlocutory stage, the suit itself should be disposed of finally at a very early date. Hence, without going into the merits of the controversy, we direct the respondent-defendant to file written statement in the suit, if not already filed, on or before the last date for closing of the Madras High Court for Dussehra holidays. We would request the learned Single Judge who is trying the suit to commence the hearing of the suit on the reopening of the Madras High Court after Dussehra holidays and then carry it on a day-to-day basis. No adjournment whatsoever ordinarily will be granted and the suit shall be finally disposed of on or before 30-11-2009.

6. The interim orders of this Court dated 8-6-2009 and 31-8-2009 are vacated and substituted by the following directions. The respondent shall be entitled to sell its product but it shall maintain accurate records/accounts of its all-India and export sales. We are appointing a Receiver to whom the records of such sale shall

be furnished every fortnight by the respondent and the same shall be signed and authenticated by a responsible officer of the respondent. A copy of the same shall be given to the appellant also.

39. No doubt, as contended by Mr. Kane, the aforesaid observations do not mean that in matters involving infringement of copyright, trademarks, etc., there is no necessity of deciding applications for interim relief, and as a rule, the parties have to proceed for trial in the suit, which suit is to be disposed of expeditiously.

40. However, taking into consideration facts and circumstances of the present case, including, but not restricted to the fact that there is no interim relief in operation since 2011, the total non-consideration of relevant issues like suppression, misstatement or acquiescence by the trial Court, the shifting stand taken by the respondent-plaintiff, the interest of justice will be better served if directions are issued for expeditious disposal of the main suit itself rather remanding the matter to the trial Court for afresh decision on the issue of interim relief.

41. The trial Court, even on conservative basis, will require at least 2 to 3 months to decide the issue of interim relief afresh. Instead, the interest of justice would be better served, if after setting aside the impugned order, directions are issued to the trial Court to dispose of the main suit itself as expeditiously as possible and in any case, within a period of six months from the date of production of authenticated copy of this order. Such direction will be consistent with the dictum of the Hon'ble Supreme Court in the

case of **Bajaj Auto Ltd.** (*supra*), and **Shri Vardhaman Rice** (*supra*).

42. For the aforesaid reasons, appeal is allowed. The impugned order is set aside. The trial Court is directed to dispose of Copyright Suit No.4/2011, as expeditiously as possible and in any case, within a period of six months from the date of production of authenticated copy of this order.

43. It is made clear that observations in the impugned order, as also in the present order, are in the context of deciding application for interim relief only. The observations are only prima facie. Therefore, such observations need not influence the trial Court while disposing of the suit on its own merits and in accordance with law. Accordingly, all contentions of all the parties are expressly left open for determination by the trial Court.

44. The parties to appear before the trial Court on 5th March, 2018 and file an authenticated copy of this order.

45. At this stage, Mr. Kane, learned counsel for the respondent submits that directions be issued for disposal of suit in four months instead of six months. The decisions in the case of **Bajaj Auto Ltd.** (*supra*) and **Shree Vardhaman** (*supra*) directS disposal of the suit within four months. Learned counsel for the parties state that they will cooperate with the learned trial Court for expeditious disposal of the suit itself. Taking into consideration this fact, learned trial Court is directed to dispose of the Copy Right suit, as expeditiously as possible, and in any case, within a

period of four months from the date of production of authenticated copy of this order.

46. Pending civil applications do not survive and stand disposed of.

(M.S. SONAK, J.)

dyb